

ESTTA Tracking number: **ESTTA398874**

Filing date: **03/18/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050093
Party	Plaintiff Whataburger Partnership LP
Correspondence Address	CHRISTOPHER KELLY WILEY REIN LLP 1776 K STREET NW WASHINGTON, DC 20006 UNITED STATES CKelly@wileyrein.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Jennifer L. Elgin
Filer's e-mail	jelgin@wileyrein.com, bcarlton@wileyrein.com, ckelly@wileyrein.com, ameltzer@wileyrein.com
Signature	/JLE/
Date	03/18/2011
Attachments	NOR 3A-Final.pdf (78 pages)(9727270 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATABURGER PARTNERSHIP, L.P .)	
)	
Petitioner,)	
	)	Cancellation No.: 92,050093
v.	)	Reg. No.: 3,155,106
	)	Mark: WHAT A PICKLE!
GIELOW PICKLES, INC.)	
)	
Respondent.)	

Petitioner's Third Notice of Reliance

Pursuant Rule 2.122(e) of the Trademark Rules of Practice, to 37 C.F.R. § 2.122(e), Petitioner WHATABURGER PARTNERSHIP, hereby gives notice of its reliance upon the attached notices of opposition and petitions for cancellation, as well as the Board orders terminating such proceedings, from various oppositions and cancellations brought by Petitioner against the registration of confusingly similar WHATA formative marks on the Principal Register. These official records are considered self-authenticating, and as such, require no extrinsic evidence of authenticity as a condition to admissibility.

These materials are relevant to this opposition because, among other things, they demonstrate that Petitioner conducts a vigorous, successful enforcement program to prevent or limit registration of conflicting WHATA formative marks (such as WHATA____; WHATTA____; and WHAT A _____) and the potential dilution of its own WHATA formative marks, including its famous mark WHATABURGER. The successful policing of its marks has added to their strength because it prevents weakening of the marks' distinctiveness in the relevant market.

The following notices of opposition, petitions for cancellation and the relevant terminating orders from the Board (where appropriate) are attached as Exhibits C-1 through C-13 hereto:

Exhibit C-1: *Whataburger Partnership v. What A Pizza What A Price Franchising, LLC*, Opp. No. 92052943 (WHAT A PIZZA WHAT A PRICE);

Exhibit C-2: *Whataburger Partnership v. Gielow Pickles, Inc.*, Opp. No. 92050093 (WHAT A PICKLE!);

Exhibit C-3: *Whataburger Partnership v. Agroamerica Corporation*, Can. No. 92050094 (WATTA);

Exhibit C-4: *Whataburger Partnership v. Mahaney*, Opp. No. 91186046 (WHATADOG);

Exhibit C-5: *Whataburger Partnership v. TBC Investments Inc.*, Opp. No. 91183490 (WHATTACAKE);

Exhibit C-6: *Whataburger Partnership v. Agroamerica Corporation*, Opp. No. 91179671 (WATTAFRUIT & Design);

Exhibit C-7: *Whatapartnership, L.P. v. Com-Pac International, Inc.*, Opp. No. 91175612 (WHATABAG);

Exhibit C-8: *Whatapartnership, L.P. v. Suite One Staffing Group, Inc.*, Can. No. 92044859 (WHAT-A-RACK);

Exhibit C-9: *Whatapartnership, L.P. v. Halbro, LLC*, Opp. No. 91166232 (THE "WOW!...WHAT A SUB!!" BOYZ SUBS & STEAKS);

Exhibit C-10: *Whatapartnership, L.P. v. SCJ Enterprises, Inc.*, Opp. No. 91161459 (WHATTA JERK X-TREME BEEF JERKY);

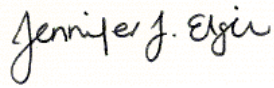
Exhibit C-11: *Whatapartnership, L.P. v. SCJ Enterprises, Inc.*, Opp. No. 91161455 (WHATTA JERK X-TREME BEEF JERKY);

Exhibit C-12: *Whatapartnership, L.P. v. Noret*, Opp. No. 91163686 (CHIHUAHUA "WHAT A SANDWICH"); and

Exhibit C-13: *Whatapartnership, L.P. v. W.A.B. Bakery Franchising Ltd.*, Opp. No. 91161129 (WHAT A BAGEL!).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: 

Christopher Kelly
Jennifer L. Elgin
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Whataburger Partnership

Dated: March 18, 2011

EXHIBIT C

EXHIBIT C-1

ESTTA Tracking number: **ESTTA364081**Filing date: **08/19/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership		
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson, Hugh Dobson, Lynne Dobson		
Address	300 Concord Plaza Drive San Antonio, TX 78216 UNITED STATES		
Attorney information	Jennifer L. Elgin Wiley Rein LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES jelgin@wileyrein.com, bcarlton@wileyrein.com, bdavis@wileyrein.com Phone: 202--719-7000		

Registration Subject to Cancellation

Registration No	3797426	Registration date	06/01/2010
Registrant	WHAT A PIZZA WHAT A PRICE FRANCHISING, LLC P.O. BOX 540 VANCEBURG, KY 41179 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2007/01/31 First Use In Commerce: 2007/01/31 All goods and services in the class are cancelled, namely: PIZZA
Class 035. First Use: 2010/03/19 First Use In Commerce: 2010/03/19 All goods and services in the class are cancelled, namely: FRANCHISING SERVICES, NAMELY, OFFERING TECHNICAL ASSISTANCE IN THE ESTABLISHMENT AND/OR OPERATION OF COMMISSARIES, AND IN SUPPLYING PIZZA, PIZZA DOUGH, PIZZA SAUCE, SPICES AND KITS FOR PREPARING PIZZA AT SUPERMARKETS

Grounds for Cancellation


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	WHATABURGER (Reg. No. 652,137)
Goods/Services	hamburger sandwich

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WHATABURGER (Reg. No. 891,082)		
Goods/Services	restaurant services and drive in restaurant services		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS</p> <p>Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES</p> <p>Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES</p>		

U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		
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U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises		

U.S. Registration	2160285	Application Date	03/24/1997
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No.			
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich		

U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	<p style="text-align: center;">WHATABURGER</p>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	<p style="text-align: center;">WHATAKIDS</p>		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		

Design Mark	WHATAGUY		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services		

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark	WHATAKIDS		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services		

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark	WHATACOMIX		
Description of	NONE		


Mark	
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark	<p style="text-align: center;">WHATAPLACE! WHATATASTE!</p>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	<p style="text-align: center;">WHATABURGER</p>		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		


U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDER		
Design Mark	<p style="text-align: center;">WHATABLENDER</p>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration	3185230	Application Date	01/07/2005
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No.			
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		

U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts

Attachments	72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75654525#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes) 76332382#TMSN.gif (1 page)(bytes) 76473190#TMSN.jpeg (1 page)(bytes) 76627124#TMSN.gif (1 page)(bytes) 78598999#TMSN.jpeg (1 page)(bytes) 78598994#TMSN.jpeg (1 page)(bytes) Petition_to_cancel_WHAT_A_PIZZA_WHAT_A_PRICE-WRFMAIN-#13175552-v1.pdf (28 pages)(987614 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jennifer L. Elgin/
Name	Jennifer L. Elgin
Date	08/19/2010

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATABURGER PARTNERSHIP)	
)	
Petitioner,	)	Cancellation No.: _____
)	
v.	)	Mark: WHAT A PIZZA WHAT A
	)	PRICE & Design
WHAT A PIZZA WHAT A PRICE	)	Reg. No.: 3,797,426
FRANCHISING, LLC)	
)	
Respondent.)	

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at 300 Concord Plaza Drive, San Antonio, TX 78216, hereby petitions to cancel Registration No. 3,797,426 for WHAT A PIZZA WHAT A PRICE & Design (“Respondent’s Mark”), filed on July 6, 2009 and registered on the Principal Register on June 1, 2010, for “pizza” in International Class 030 and “franchising services , namely offering technical assistance in the establishment and/or operation of a commissaries, and in supplying pizza, pizza dough, pizza sauce, spices and kits for preparing pizza at supermarkets” in International Class 035, by What a Pizza What a Price Franchising, LLC (“Respondent”). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,797,426 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees and franchisees are collectively referred to as “Petitioner”).

2. Petitioner operates or franchises over 700 restaurants under the WHATABURGER name.

3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurant services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify its restaurant and franchising services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Petitioner has developed a family of WHATA marks to identify its food products and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

- (a) Registration No. 652,137 – **WHATABURGER** for “hamburger sandwich,” registered on the Principal Register September 24, 1957.
- (b) Registration No. 891,082 – **WHATABURGER** for “restaurant services and drive in restaurant services,” registered on the Principal Register May 12, 1970.
- (c) Registration No. 1,011,927 – **WHATABURGER** for “hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches” and “restaurant and drive-in restaurant services,” registered on the Principal Register on May 27, 1975.

- (d) Registration No. 1,011,928 – **WHATABURGER & W Design** for “hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches” and “restaurant and drive-in restaurant services,” registered on the Principal Register on May 27, 1975.
- (e) Registration No. 1,014,196 – **WHATABURGER JR.** for “prepared hamburger sandwich for consumption on or off premises,” registered on the Principal Register on June 24, 1975.
- (f) Registration No. 1,116,918 – **WHATAMEAL** for “prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises,” registered on the Principal Register April 24, 1979.
- (g) Registration No. 1,206,344 – **WHATACATCH** for “breaded fish fillets suitable for fish sandwiches” and “prepared fish sandwich for consumption on or off the premises,” registered on the Principal Register August 24, 1982.
- (h) Registration No. 2,160,285 – **WHATACHICK’N** for “chicken sandwich,” registered on the Principal Register May 26, 1998.
- (i) Registration No. 2,335,590 – **WHATABURGER** for “restaurant services,” registered on the Principal Register March 28, 2000.
- (j) Registration No. 2,372,372 – **WHATAKIDS** for “clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats,” registered on the Principal Register August 1, 2000.
- (k) Registration No. 2,418,380 – **WHATAGUY** for “restaurant services,” registered on the Principal Register January 2, 2000.
- (l) Registration No. 2,432,191 – **WHATAKIDS** for “restaurant services,” registered on the Principal Register February 27, 2001.
- (m) Registration No. 2,519,854 – **WHATACOMIX** for “comic books and children’s activity books,” registered on the Principal Register December 18, 2001.
- (n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for “restaurant services,” registered on the Principal Register January 29, 2002.
- (o) Registration No. 2,757,109 – **WHATABURGER** for “charitable fundraising services,” registered on the Principal Register August 26, 2003.
- (p) Registration No. 2,846,139 – **WHATABLENDERS** for “milk shake drinks, bases for milk shake drinks and candy flavored toppings,” registered on the Principal Register May 25, 2004.

- (q) Registration No. 3,185,230 – **WHATASIZE** for “restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises,” registered on the Principal Register December 19, 2006.
- (r) Registration No. 3,188,132 – **WHATABURGER FIELD** for “providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts,” registered on the Principal Register December 19, 2006.
- (s) Registration No. 3,188,136 – **WHATABURGER FIELD & Design** for “providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts,” registered on the Principal Register December 19, 2006.

8. Many of Petitioner’s pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner’s ownership thereof, and of Petitioner’s exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner’s extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. On information and belief, Respondent has adopted and used Respondent’s Mark in connection with pizza and franchising services.

11. Respondent is the owner of record of the Reg. No. 3,797,426 for Respondent’s Mark, which claims a date of first use in commerce of January 31, 2007 for the goods, “pizza”, in International Class 030, and March 19, 2010 for the services, “franchising services, namely, offering technical assistance in the establishment and/or operation of commissaries, and in

supplying pizza, pizza dough, pizza sauce, spices and kits for preparing pizza at supermarkets” in International Class 035.

12. The constructive and actual dates of first use of many of Petitioner’s WHATABURGER and WHATA marks precede the filing date of the opposed Registration No. 3,797,426; the issuance date of Registration No. 3,797,426; and the dates of first use identified in the challenged registration.

13. The products and services identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks; the products in the challenged registration are not restricted as to types of customers and channels of trade; and the designation WHAT A PIZZA WHAT A PRICE so resembles Petitioner’s WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent’s products and services, to cause confusion and mistake and to deceive.

14. The designation WHAT A PIZZA WHAT A PRICE is confusingly similar to Petitioner’s WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner’s exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

15. Any defect, objection or fault found with any food product sold or service provided under the designation WHAT A PIZZA WHAT A PRICE would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.

16. Petitioner will continue to be damaged by registration of Respondent’s designation.

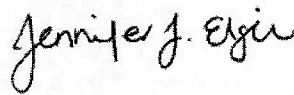
WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS (\$300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This cancellation is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP

By: 

Christopher Kelly
Jennifer L. Elgin
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Whataburger Partnership

Dated: August 19, 2010

13175552.1

EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 652,137

United States Patent and Trademark Office

Registered Sep. 24, 1957

10 Year Renewal

Renewal Term Begins Sep. 24, 1997

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)

4600 PARKDALE DRIVE

CORPUS CHRISTI, TX 78411, BY ASSIGNMENT, CHANGE OF NAME, CHANGE OF NAME, ASSIGNMENT AND MERGER WITH DOBSON, HARMON A. (UNITED STATES CITIZEN) CORPUS CHRISTIE, TX

FOR: HAMBURGER SANDWICH, IN CLASS 46 (INT. CL. 30).

FIRST USE 1-1-1950; IN COMMERCE 2-10-1953.

SER. NO. 71-667,794, FILED 6-7-1954.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on July 29, 1997.

Int. Cl.: 42

Prior U.S. Cl.: 100

United States Patent and Trademark Office

10 Year Renewal

Reg. No. 891,082

Registered May 12, 1970

Renewal Approved Feb. 15, 1990

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE
BY ASSIGNMENT, MERGER AND
CHANGES OF NAME FROM DOBSON,
GRACE W. (UNITED STATES CITI-
ZEN), DOING BUSINESS AS WHATA-
BURGER DRIVE INNS, CORPUS
CHRISTI, TX

FOR: RESTAURANT SERVICES AND
DRIVE IN RESTAURANT SERVICES, IN
CLASS 100 (INT. CL. 42).

FIRST USE 1-1-1950, IN COMMERCE
2-10-1953.

SER. NO. 72-291,496, FILED 2-20-1968.

OWNER OF U.S. REG. NO. 652,137.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Mar. 27, 1990.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29, 30, 32, 42

Prior U.S. Cl.: 45, 46, 100

United States Patent Office

Reg. No. 1,011,927

Registered May 27, 1975

TRADEMARK
SERVICE MARK

Principal Register

WHATABURGER

Whataburger, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404, by merger and change of
name from
Whataburger No. 1, Inc. (Texas corporation)
Corpus Christi, Tex.

For: SOFT DRINKS, in CLASS 45 (INT. CL. 32).

For: HAMBURGERS, CHEESEBURGERS,
FRENCH FRIED POTATOES, POTATO CHIPS,
CORN CHIPS, FRIED PIES, ONION RINGS, MALT
AND SHAKE BEVERAGES, AND FRANKFURTER
SANDWICHES, in CLASS 46 (INT. CLS. 29 and 30).

For: RESTAURANT AND DRIVE-IN RESTAU-
RANT SERVICES, in CLASS 100 (INT. CL. 42).

First use July 18, 1972; in commerce July 28, 1972.
The drawing is lined for the colors orange and brown.

Ser. No. 442,464, filed Nov. 29, 1972.

M. MERCHANT, Examiner

FOR: RESTAURANT AND DRIVE-IN
RESTAURANT SERVICES, IN CLASS
100 (INT. CL. 42).

FIRST USE 7-28-1972; IN COMMERCE
7-28-1972.

SER. NO. 72-442,465, FILED 11-29-1972.

Int. Cls.: 29, 30, 32 and 42

Prior U.S. Cls.: 45, 46 and 100

United States Patent and Trademark Office
Amended

Reg. No. 1,011,928
Registered May 27, 1975
OG Date Sep. 12, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER



WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, ASSIGNEE
BY CHANGE OF NAME, ASSIGNMENT AND MERGER FROM WHATABURGER INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

THE DRAWING IS LINED FOR THE COLORS ORANGE AND BROWN, BUT COLOR IS NOT CLAIMED AS A FEATURE OF THE MARK.

FOR: SOFT DRINKS, IN CLASS 45
(INT. CL. 32).
FIRST USE 7-18-1972; IN COMMERCE
7-28-1972.

FOR: HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS,] CORN CHIPS, FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES, IN CLASS 46
(INT. CLS. 29 AND 30).
FIRST USE 7-18-1972; IN COMMERCE
7-28-1972.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Sep. 12, 1995.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,014,196

Registered June 24, 1975

10 Year Renewal

Renewal Term Begins June 24, 1995

TRADEMARK
PRINCIPAL REGISTER

WHATABURGER JR.

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 78411, BY
CHANGE OF NAME AND ASSIGN-
MENT FROM LUTZ, GRACE DOBSON
(UNITED STATES CITIZEN) CORPUS
CHRISTI, TX

OWNER OF U.S. REG. NOS. 652,137,
891,082 AND 963,811.

FOR: PREPARED HAMBURGER
SANDWICH FOR CONSUMPTION ON
OR OFF THE PREMISES, IN CLASS 29
(U.S. CL. 46).

FIRST USE 4-1-1973; IN COMMERCE
8-29-1973.

SER. NO. 73 007,283, FILED 11-26-1973.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 8, 1995.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 1,116,918

United States Patent and Trademark Office

Registered Apr. 24, 1979

10 Year Renewal

Renewal Term Begins Apr. 24, 1999

TRADEMARK
PRINCIPAL REGISTER

WHATAMEAL

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981, BY
MERGER WITH WHATABURGER
SYSTEMS, INC. (TEXAS CORPORATION) CORPUS CHRISTI, TX

FOR: PREPARED MEAL CONSISTING
OF A HAMBURGER SANDWICH,
FRENCH FRIES AND A BEVERAGE
FOR CONSUMPTION ON OR OFF THE
PREMISES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 7-1-1975; IN COMMERCE
7-1-1975.

SER. NO. 73-155,977, FILED 1-20-1978.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Mar. 30, 1999.*

Prior U.S. Cl.: 40

United States Patent and Trademark Office

Reg. No. 1,206,344

Registered Aug. 24, 1982

TRADEMARK

Principal Register

WHATAACATCH

Whataburger Systems, Inc. (Texas corporation)
3104 S. Alameda
Corpus Christi, Tex. 78404

For: BREADED FISH FILLETS SUITABLE
FOR FISH SANDWICHES, in CLASS 29 (U.S. Cl.
46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

For: PREPARED FISH SANDWICH FOR
CONSUMPTION ON OR OFF THE PREMISES,
in CLASS 30 (U.S. Cl. 46).

First use Oct. 14, 1978; in commerce Apr. 1, 1979.

Owner of U.S. Reg. Nos. 652,137, 1,011,928 and
others.

Ser. No. 226,971, filed Aug. 10, 1979.

JERRY L. PRICE, Primary Examiner

ROBERT C. CLARK JR., Examiner

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,160,285

Registered May 26, 1998

TRADEMARK
PRINCIPAL REGISTER

WHATACHICK'N

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FIRST USE 1-1-1984; IN COMMERCE
1-1-1984.
OWNER OF U.S. REG. NOS. 652,137, 1,116,918
AND OTHERS.

FOR: CHICKEN SANDWICH, IN CLASS 30
(U.S. CL. 46).

SER. NO. 75-261,844, FILED 3-24-1997.

SUSAN LESLIE, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,335,590

United States Patent and Trademark Office

Registered Mar. 28, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

WHATABURGER

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FIRST USE 1-1-1950; IN COMMERCE
2-10-1953.
OWNER OF U.S. REG. NOS. 1,011,927, 2,160,285
AND OTHERS.

FOR: RESTAURANT SERVICES, IN CLASS
42 (U.S. CLS. 100 AND 101).

SER. NO. 75-674,147, FILED 4-5-1999.
DAVID ETtinger, EXAMINING ATTORNEY

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,372,372

Registered Aug. 1, 2000

TRADEMARK
PRINCIPAL REGISTER

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

ALLS, ONESIES, BASEBALL CAPS AND HATS, IN
CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 11-0-1998; IN COMMERCE 2-15-1999.

FOR: CLOTHING FOR CHILDREN, NAMELY,
SHIRTS, POLO SHIRTS, T-SHIRTS, DRESSES, OVER-

SER. NO. 75-654,525, FILED 3-5-1999.

SUSAN LESLIE DUBOIS, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,418,380

United States Patent and Trademark Office

Registered Jan. 2, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

WHATAGUY

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SN 75-698,642, FILED 5-6-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

KATHERINE STOIDES, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

Reg. No. 2,432,191

United States Patent and Trademark Office

Registered Feb. 27, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

WHATAKIDS

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FIRST USE 4-1-1999; IN COMMERCE 4-1-1999.

SN 75-647,561, FILED 2-22-1999.

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 42

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 2,534,527

Registered Jan. 29, 2002

SERVICE MARK
PRINCIPAL REGISTER

WHATAPLACE! WHATATASTE!

WHATABURGER, INC. (TEXAS CORPORATION)
4600 PARKDALE DRIVE
CORPUS CHRISTI, TX 784112981

FOR: RESTAURANT SERVICES, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 10-11-1998; IN COMMERCE 10-11-1998.

SN 75-657,290, FILED 3-10-1999.

JASON TURNER, EXAMINING ATTORNEY

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

Reg. No. 2,519,854

United States Patent and Trademark Office

Registered Dec. 18, 2001

**TRADEMARK
PRINCIPAL REGISTER**

WHATACOMIX

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-
ITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FIRST USE 1-1-2000; IN COMMERCE 1-1-2000.

SER. NO. 76-188,399, FILED 1-2-2001.

FOR: COMIC BOOKS AND CHILDREN'S ACTIV-
ITY BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37,
38 AND 50).

EDWARD TIMBERLAKE, EXAMINING ATTOR-
NEY

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,757,109
Registered Aug. 26, 2003

SERVICE MARK
PRINCIPAL REGISTER

WHATABURGER

WHATAPARTNERSHIP, L.P. (DELAWARE LIM-
ITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FIRST USE 10-5-2001; IN COMMERCE 10-5-2001.

SN 76-332,382, FILED 10-31-2001.

FOR: CHARITABLE FUNDRAISING SERVICES,
IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

RUSS HERMAN, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,846,139

United States Patent and Trademark Office

Registered May 25, 2004

TRADEMARK
PRINCIPAL REGISTER

WHATABLENDERS

WHATAPARTNERSHIP, L.P., (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE
SUITE 900
WILMINGTON, DE 19801

FIRST USE 9-4-2002; IN COMMERCE 11-4-2002.

OWNER OF U.S. REG. NOS. 1,116,918, 2,409,945,
AND OTHERS.

FOR: MILK SHAKE DRINKS, BASES FOR MILK
SHAKE DRINKS AND CANDY FLAVORED TOP-
PINGS THEREFOR, IN CLASS 30 (U.S. CL. 46).

SN 76-473,190, FILED 12-6-2002.

DAWN FELDMAN, EXAMINING ATTORNEY

Int. Cl.: 43

Prior U.S. Cls.: 100 and 101

United States Patent and Trademark Office

Reg. No. 3,185,230

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER

WHATASIZE

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: RESTAURANT SERVICES FEATURING A PREPARED MEAL CONTAINING FRENCH FRIES AND A SOFT DRINK FOR CONSUMPTION ON OR OFF THE PREMISES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1998; IN COMMERCE 0-0-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,011,927 AND 1,011,928.

SER. NO. 76-627,124, FILED 1-7-2005.

ALICE SUE CARRUTHERS, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,132

Registered Dec. 19, 2006

**SERVICE MARK
PRINCIPAL REGISTER**

WHATABURGER FIELD

WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD", APART FROM THE MARK AS SHOWN.

SN 78-598,999, FILED 3-31-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

Int. Cl.: 41

Prior U.S. Cls.: 100, 101, and 107

United States Patent and Trademark Office

Reg. No. 3,188,136

Registered Dec. 19, 2006

SERVICE MARK
PRINCIPAL REGISTER



WHATAPARTNERSHIP, L.P. (DELAWARE LIMITED PARTNERSHIP)
300 DELAWARE AVENUE, SUITE 900
WILMINGTON, DE 19801

FOR: PROVIDING STADIUM FACILITIES FOR SPORTING EVENTS, EXHIBITIONS, CONVENTIONS, COMMUNITY FESTIVAL EVENTS AND CONCERTS, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-6-2005; IN COMMERCE 4-6-2005.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FIELD CORPUS CHRISTI", APART FROM THE MARK AS SHOWN.

SN 78-599,894, FILED 4-1-2005.

JUDITH HELFMAN, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to TBMP 2.101(a), on this date I served the foregoing PETITION FOR CANCELLATION upon Registrant and its counsel of record by causing a copy thereof to be deposited in the United States Mail, postage prepaid and addressed as follows:

What A Pizza What A Price Franchising, LLC
P.O. Box 540
Vanceburg, KY 41179

Jeffrey B. Sladkus, Esq.
The Sladkus Law Group
1827 Powers Ferry Road
Building 6, Suite 200
Atlanta, GA 30339

The 19th day of August, 2010.



Jennifer L. Elgin

EXHIBIT C-2

ESTTA Tracking number: **ESTTA244171**Filing date: **10/22/2008****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD****Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership LP		
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson Hugh Dobson Lynne Dobson		
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES		

Attorney information	Christopher Kelly WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com Phone:202-719-7000
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Registration Subject to Cancellation

Registration No	3155106	Registration date	10/10/2006
Registrant	Gielow Pickles, Inc 5260 Main St Lexington, MI 48450 UNITED STATES		

Goods/Services Subject to Cancellation


Class 029. First Use: 2005/01/26 First Use In Commerce: 2006/02/01 All goods and services in the class are cancelled, namely: Pickles
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Grounds for Cancellation


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		

Design Mark	
Description of Mark	NONE
Goods/Services	Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 HAMBURGER SANDWICH


U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28		

	HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES		
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U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE

Word Mark	W WHATABURGER
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES
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U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		


U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority	NONE


		Date	
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises		

U.S. Registration No.	2160285	Application Date	03/24/1997
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich		

U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	<p style="text-align: center;">WHATABURGER</p>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services		


U.S. Registration No.	2432181	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		


Design Mark	WHATAKIDS
Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services


U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE
Word Mark	WHATACOMIX		
Design Mark	WHATACOMIX		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books		

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark	WHATAPLACE! WHATATASTE!		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		


U.S. Registration No.	2757109	Application Date	10/31/2001
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Registration Date	08/26/2003	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		

U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration No.	3185230	Application Date	01/07/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		

U.S. Registration No.	3188132	Application Date	03/31/2005
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Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

Attachments	71667794#TMSN.gif (1 page)(bytes) 72291496#TMSN.gif (1 page)(bytes) 72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75654525#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 75657290#TMSN.gif (1 page)(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/
Name	Christopher Kelly
Date	10/22/2008

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATABURGER PARTNERSHIP L.P.)	
)	
Petitioner,)	
)	
v.	)	Cancellation No.: _____
	)	Mark: WHAT A PICKLE
GIELOW PICKLES, INC.	)	Reg. No.: 3,155,106
)	
Respondent.)	

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby petitions to cancel Registration No. 3,155,106 – WHAT A PICKLE for “pickles,” in International Class 29, registered on the Principal Register October 10, 2006, by Gielow Pickles, Inc. (“Registrant”). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,155,106 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as “Petitioner”).
2. Petitioner operates over 700 restaurants under the WHATABURGER name.
3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Petitioner has developed a family of WHATA marks to identify its food products and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

- (a) Registration No. 652,137 – **WHATABURGER** for "hamburger sandwich," registered on the Principal Register September 24, 1957.
- (b) Registration No. 891,082 – **WHATABURGER** for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.
- (c) Registration No. 1,011,927 – **WHATABURGER** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
- (d) Registration No. 1,011,928 – **WHATABURGER & W Design** for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
- (e) Registration No. 1,014,196 – **WHATABURGER JR.** for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

- (f) Registration No. 1,116,918 – **WHATAMEAL** for “prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises,” registered on the Principal Register April 24, 1979.
- (g) Registration No. 1,206,344 – **WHATACATCH** for “breaded fish fillets suitable for fish sandwiches” and “prepared fish sandwich for consumption on or off the premises,” registered on the Principal Register August 24, 1982.
- (h) Registration No. 2,160,285 – **WHATCHICK’N** for “chicken sandwich,” registered on the Principal Register May 26, 1998.
- (i) Registration No. 2,335,590 – **WHATABURGER** for “restaurant services,” registered on the Principal Register March 28, 2000.
- (j) Registration No. 2,372,372 – **WHATAKIDS** for “clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats,” registered on the Principal Register August 1, 2000.
- (k) Registration No. 2,418,380 – **WHATAGUY** for “restaurant services,” registered on the Principal Register January 2, 2000.
- (l) Registration No. 2,432,191 – **WHATAKIDS** for “restaurant services,” registered on the Principal Register February 27, 2001.
- (m) Registration No. 2,519,854 – **WHATACOMIX** for “comic books and children’s activity books,” registered on the Principal Register December 18, 2001.
- (n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for “restaurant services,” registered on the Principal Register January 29, 2002.
- (o) Registration No. 2,757,109 – **WHATABURGER** for “charitable fundraising services,” registered on the Principal Register August 26, 2003.
- (p) Registration No. 2,846,139 – **WHATABLENDERS** for “milk shake drinks, bases for milk shake drinks and candy flavored toppings,” registered on the Principal Register May 25, 2004.
- (q) Registration No. 3,185,230 – **WHATASIZE** for “restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises,” registered on the Principal Register December 19, 2006.
- (r) Registration No. 3,188,132 – **WHATABURGER FIELD** for “providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts,” registered on the Principal Register December 19, 2006.

- (s) Registration No. 3,188,136 – WHATABURGER FIELD & Design for “providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts,” registered on the Principal Register December 19, 2006.

8. Many of Petitioner’s pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner’s ownership thereof, and of Petitioner’s exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner’s extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. The constructive and actual dates of first use of many of Petitioner’s WHATABURGER and WHATA marks precede the filing date of the underlying application to Registration No. 3,155,106; the issuance date of Registration No. 3,155,106; and the dates of first use identified in the challenged registration.

11. On information and belief, Respondent has adopted and uses the designation WHAT A PICKLE in connection with food products consisting of “pickles.”

12. The food products identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks;

the products in the challenged registration are not restricted as to types of customers and channels of trade; and the designation WHAT A PICKLE so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's food products, to cause confusion and mistake and to deceive.

13. The designation WHAT A PICKLE is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

14. Any defect, objection or fault found with any food product sold under the designation WHAT A PICKLE would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.

15. Petitioner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS (\$300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP, L.P.

By: 

J. Timothy Hobbs
Christopher Kelly
Jennifer Elgin
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Whataburger Partnership, L.P.

Dated: October 21, 2008

12916058.1

EXHIBIT C-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whataburger Partnership L.P.		
Entity	Partnership	Citizenship	Texas
Composed Of:	Thomas E. Dobson Hugh Dobson Lynne Dobson		
Address	One Whataburger Way Corpus Christi, TX 78411 UNITED STATES		

Attorney information	Christopher Kelly WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com Phone:202-719-7000
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Registration Subject to Cancellation

Registration No	3389431	Registration date	02/26/2008
Registrant	Agroamerica Corporation Avenida Las Americas 22-83 Zona 14 Ciudad Guatemala, GUATEMALA		

Goods/Services Subject to Cancellation


Class 031. First Use: 2006/12/03 First Use In Commerce: 2006/12/03 All goods and services in the class are cancelled, namely: Fresh fruits; Fresh vegetables


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	652137	Application Date	06/07/1954
Registration Date	09/24/1957	Foreign Priority Date	NONE
Word Mark	WHATABURGER		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class U046 (International Class 030). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 HAMBURGER SANDWICH		

U.S. Registration No.	891082	Application Date	02/20/1968
Registration Date	05/12/1970	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U100 (International Class 042). First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 RESTAURANT SERVICES AND DRIVE IN RESTAURANT SERVICES		

U.S. Registration No.	1116918	Application Date	01/20/1978
Registration Date	04/24/1979	Foreign Priority Date	NONE
Word Mark	WHATAMEAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1975/07/01 First Use In Commerce: 1975/07/01 PREPARED MEAL CONSISTING OF A HAMBURGER SANDWICH, FRENCH FRIES AND A BEVERAGE FOR CONSUMPTION ON OR OFF THE PREMISES		

U.S. Registration No.	1206344	Application Date	08/10/1979
Registration Date	08/24/1982	Foreign Priority Date	NONE
Word Mark	WHATACATCH		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Breaded Fish Fillets Suitable for Fish Sandwiches Class 030. First use: First Use: 1978/10/14 First Use In Commerce: 1979/04/01 Prepared Fish Sandwich for Consumption On or Off the Premises

U.S. Registration No.	2160285	Application Date	03/24/1997
Registration Date	05/26/1998	Foreign Priority Date	NONE
Word Mark	WHATACHICK'N		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1984/01/01 First Use In Commerce: 1984/01/01 chicken sandwich		


U.S. Registration No.	2335590	Application Date	04/05/1999
Registration Date	03/28/2000	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark	<p style="text-align: center;">WHATABURGER</p>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1950/01/01 First Use In Commerce: 1953/02/10 restaurant services		

U.S. Registration No.	2418380	Application Date	05/06/1999
Registration Date	01/02/2001	Foreign Priority Date	NONE
Word Mark	WHATAGUY		
Design Mark	<p style="text-align: center;">WHATAGUY</p>		

Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 restaurant services

U.S. Registration No.	2432191	Application Date	02/22/1999
Registration Date	02/27/2001	Foreign Priority Date	NONE

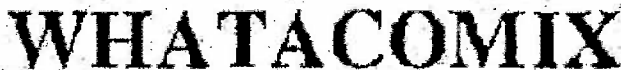
Word Mark	WHATAKIDS
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 042. First use: First Use: 1999/04/01 First Use In Commerce: 1999/04/01 restaurant services

U.S. Registration No.	2519854	Application Date	01/02/2001
Registration Date	12/18/2001	Foreign Priority Date	NONE

Word Mark	WHATACOMIX
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Design Mark	
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Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2000/01/01 First Use In Commerce: 2000/01/01 comic books and children's activity books

U.S. Registration No.	2757109	Application Date	10/31/2001
Registration Date	08/26/2003	Foreign Priority Date	NONE


Word Mark	WHATABURGER
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Design Mark	WHATABURGER		
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 2001/10/05 First Use In Commerce: 2001/10/05 Charitable fundraising services		


U.S. Registration No.	2846139	Application Date	12/06/2002
Registration Date	05/25/2004	Foreign Priority Date	NONE
Word Mark	WHATABLENDERS		
Design Mark	WHATABLENDERS		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2002/09/04 First Use In Commerce: 2002/11/04 milk shake drinks, bases for milk shake drinks and candy flavored toppings therefor		

U.S. Registration No.	3185230	Application Date	01/07/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATASIZE		
Design Mark	WHATASIZE		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1998/00/00 First Use In Commerce: 1998/00/00 Restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises		


U.S. Registration No.	3188132	Application Date	03/31/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	3188136	Application Date	04/01/2005
Registration Date	12/19/2006	Foreign Priority Date	NONE
Word Mark	WHATABURGER FIELD CORPUS CHRISTI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2005/04/06 First Use In Commerce: 2005/04/06 providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts		

U.S. Registration No.	1011927	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS</p> <p>Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES</p> <p>Class U100 (International Class 042). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES</p>
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U.S. Registration No.	1011928	Application Date	11/29/1972
Registration Date	05/27/1975	Foreign Priority Date	NONE
Word Mark	W WHATABURGER		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class U045 (International Class 032). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 SOFT DRINKS</p> <p>Class U046 (International Class 029, 030). First use: First Use: 1972/07/18 First Use In Commerce: 1972/07/28 HAMBURGERS, CHEESEBURGERS, FRENCH FRIED POTATOES, [POTATO CHIPS, CORN CHIPS,] FRIED PIES, ONION RINGS, MALT AND SHAKE BEVERAGES, AND FRANKFURTER SANDWICHES</p> <p>Class U100 (International Class 042). First use: First Use: 1972/07/28 First Use In Commerce: 1972/07/28 RESTAURANT AND DRIVE-IN RESTAURANT SERVICES</p>		

U.S. Registration No.	2372372	Application Date	03/05/1999
Registration Date	08/01/2000	Foreign Priority Date	NONE
Word Mark	WHATAKIDS		

Design Mark	WHATAKIDS
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 1998/11/00 First Use In Commerce: 1999/02/15 Clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats

U.S. Registration No.	2534527	Application Date	03/10/1999
Registration Date	01/29/2002	Foreign Priority Date	NONE
Word Mark	WHATAPLACE! WHATATASTE!		
Design Mark	WHATAPLACE! WHATATASTE!		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1998/10/11 First Use In Commerce: 1998/10/11 restaurant services		

U.S. Registration No.	1014196	Application Date	11/26/1973
Registration Date	06/24/1975	Foreign Priority Date	NONE
Word Mark	WHATABURGER JR.		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1973/04/01 First Use In Commerce: 1973/08/29 PREPARED HAMBURGER SANDWICH FOR CONSUMPTION ON OR OFF THE PREMISES		

Attachments	71667794#TMSN.gif (1 page)(bytes) 72291496#TMSN.gif (1 page)(bytes) 75674147#TMSN.gif (1 page)(bytes) 75698642#TMSN.gif (1 page)(bytes) 75647561#TMSN.gif (1 page)(bytes) 76188399#TMSN.gif (1 page)(bytes) 76332382#TMSN.gif (1 page)(bytes) 76473190#TMSN.gif (1 page)(bytes) 76627124#TMSN.gif (1 page)(bytes) 78598999#TMSN.jpeg (1 page)(bytes) 78599894#TMSN.jpeg (1 page)(bytes) 72442464#TMSN.gif (1 page)(bytes) 72442465#TMSN.gif (1 page)(bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher Kelly/
Name	Christopher Kelly
Date	10/22/2008

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATABURGER PARTNERSHIP L.P.

Petitioner,

v.

AGROAMERICA CORPORATION

Respondent.

Cancellation No.: _____

Mark: **WATTA**

Reg. No.: **3,389,431**

PETITION TO CANCEL

Whataburger Partnership, a general partnership organized under the laws of Texas, with offices located at One Whataburger Way, Corpus Christi, Texas 78411, hereby petitions to cancel Registration No. 3,389,431 – WATTA for “fresh fruits; fresh vegetables,” in International Class 31, registered on the Principal Register February 26, 2008, by Agroamerica Corporation (“Registrant”). Whataburger Partnership is being damaged by the continued registration of Registration No. 3,389,431 and puts forth the following grounds for cancellation:

1. Whataburger Partnership is the owner of all right, title and interest in and to the trademarks and service marks pleaded in this Petition to Cancel and licenses said marks for use in connection with the WHATABURGER restaurant system (Whataburger Partnership and its licensees are collectively referred to as “Petitioner”).
2. Petitioner operates over 700 restaurants under the WHATABURGER name.
3. Petitioner, through its predecessors in interest, adopted and commenced use of the WHATABURGER name as a service mark for restaurants services in 1950 and has used the name continuously and without interruption to the present day.

4. Petitioner uses the WHATABURGER name not only to identify its restaurant services, but also as a trademark to identify food products sold at its restaurants and elsewhere.

5. Petitioner has developed a family of WHATA marks to identify its food products, and collateral products and services, such as printed materials, clothing and stadium services.

6. Based on Petitioner's extensive, exclusive and continuous use of its WHATABURGER and WHATA marks in connection with restaurant services, food products and collateral goods, the name WHATABURGER and Petitioner's other WHATA marks have come to be recognized among the consuming public as designators of origin with respect to said services and products.

7. Petitioner is the owner of all right, title and interest in and to the following federal service mark and trademark registrations, which presently are valid and subsisting in law (photocopies are attached hereto as Exhibit A).

- (a) Registration No. 652,137 – WHATABURGER for "hamburger sandwich," registered on the Principal Register September 24, 1957.
- (b) Registration No. 891,082 – WHATABURGER for "restaurant services and drive in restaurant services," registered on the Principal Register May 12, 1970.
- (c) Registration No. 1,011,927 – WHATABURGER for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
- (d) Registration No. 1,011,928 – WHATABURGER & W Design for "hamburgers, cheeseburgers, french fried potatoes, fried pies, onion rings, malt and shake beverages, and frankfurter sandwiches" and "restaurant and drive-in restaurant services," registered on the Principal Register on May 27, 1975.
- (e) Registration No. 1,014,196 – WHATABURGER JR. for "prepared hamburger sandwich for consumption on or off premises," registered on the Principal Register on June 24, 1975.

- (f) Registration No. 1,116,918 – **WHATAMEAL** for “prepared meal consisting of a hamburger sandwich, french fries and a beverage for consumption on or off the premises,” registered on the Principal Register April 24, 1979.
- (g) Registration No. 1,206,344 – **WHATACATCH** for “breaded fish fillets suitable for fish sandwiches” and “prepared fish sandwich for consumption on or off the premises,” registered on the Principal Register August 24, 1982.
- (h) Registration No. 2,160,285 – **WHATCHICK’N** for “chicken sandwich,” registered on the Principal Register May 26, 1998.
- (i) Registration No. 2,335,590 – **WHATABURGER** for “restaurant services,” registered on the Principal Register March 28, 2000.
- (j) Registration No. 2,372,372 – **WHATAKIDS** for “clothing for children, namely, shirts, polo shirts, t-shirts, dresses, overalls, onesies, baseball caps and hats,” registered on the Principal Register August 1, 2000.
- (k) Registration No. 2,418,380 – **WHATAGUY** for “restaurant services,” registered on the Principal Register January 2, 2000.
- (l) Registration No. 2,432,191 – **WHATAKIDS** for “restaurant services,” registered on the Principal Register February 27, 2001.
- (m) Registration No. 2,519,854 – **WHATACOMIX** for “comic books and children’s activity books,” registered on the Principal Register December 18, 2001.
- (n) Registration No. 2,534,527 – **WHATAPLACE! WHATATASTE!** for “restaurant services,” registered on the Principal Register January 29, 2002.
- (o) Registration No. 2,757,109 – **WHATABURGER** for “charitable fundraising services,” registered on the Principal Register August 26, 2003.
- (p) Registration No. 2,846,139 – **WHATABLENDERS** for “milk shake drinks, bases for milk shake drinks and candy flavored toppings,” registered on the Principal Register May 25, 2004.
- (q) Registration No. 3,185,230 – **WHATASIZE** for “restaurant services featuring a prepared meal containing french fries and a soft drink for consumption on or off the premises,” registered on the Principal Register December 19, 2006.
- (r) Registration No. 3,188,132 – **WHATABURGER FIELD** for “providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts,” registered on the Principal Register December 19, 2006.

- (s) Registration No. 3,188,136 – WHATABURGER FIELD & Design for “providing stadium facilities for sporting events, exhibitions, conventions, community festival events and concerts,” registered on the Principal Register December 19, 2006.

8. Many of Petitioner’s pleaded registrations are incontestable as to the products and services listed therein and are conclusive evidence of the validity of the registered marks, Petitioner’s ownership thereof, and of Petitioner’s exclusive right to use the marks in commerce on or in connection with the products and services identified in the registrations.

9. Petitioner has invested substantial sums advertising and promoting the sale of its goods and services under its WHATABURGER and WHATA marks. By reason of Petitioner’s extensive, exclusive and continuous use of its WHATABURGER and WHATA marks, the relevant consuming public has come to recognize the WHATABURGER and WHATA marks as being used by Petitioner to associate and identify the WHATABURGER and WHATA marks with Petitioner. Petitioner has obtained and enjoys an exceedingly valuable reputation and goodwill symbolized by the WHATABURGER and WHATA marks.

10. The constructive and actual dates of first use of Petitioner’s WHATABURGER and WHATA marks precede the filing date of the underlying application to Registration No. 3,389,431; the issuance date of Registration No. 3,389,431; and the dates of first use identified in the challenged registration..

11. On information and belief, Respondent has adopted and uses the designation WATTA in connection with food products consisting of “fresh fruits” and “fresh vegetables.”

12. The food products identified in the challenged registration are closely related to the products and services offered by Petitioner under its WHATABURGER and WHATA marks.

The products in the challenged registration are not restricted as to types of customers and channels of trade.

13. The designation WATTA so resembles Petitioner's WHATABURGER and WHATA marks in terms of appearance, sound, connotation and commercial impression as to be likely, when applied to Respondent's food products, to cause confusion and mistake and to deceive.

14. The designation WATTA is confusingly similar to Petitioner's WHATABURGER and WHATA marks so that continued registration of the designation would be inconsistent with and damaging to Petitioner's exclusive and prior rights in its registered marks in connection with the products and services with which they are used.

15. Any defect, objection or fault found with any food product sold under the designation WATTA would injure the valuable reputation and goodwill Petitioner has established for its products and services sold under its WHATABURGER and WHATA marks.

16. Petitioner will continue to be damaged by registration of Respondent's designation.

WHEREFORE, Petitioner prays that its petition for cancellation be sustained and that the challenged registration be cancelled in its entirety.

Petitioner hereby authorizes the filing fee of THREE HUNDRED DOLLARS (\$300.00) and any additional charges necessary to institute this proceeding to be debited from the deposit account of Wiley Rein, Account No. 501129.

This opposition is being filed by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.111(b).

Respectfully submitted,

WHATABURGER PARTNERSHIP, L.P.

By: 

J. Timothy Hobbs
Christopher Kelly
Jennifer Elgin
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7000

Attorneys for Whataburger Partnership, L.P.

Dated: October 22, 2008

12905237.1

ESTTA Tracking number: **ESTTA314934**

Filing date: **11/03/2009**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Proceeding	92050094
Party	Plaintiff Whataburger Partnership L.P.
Correspondence Address	Christopher Kelly WILEY REIN LLP 1776 K Street, N.W. Washington, DC 20006 UNITED STATES ckelly@wileyrein.com
Submission	Other Motions/Papers
Filer's Name	Christopher Kelly
Filer's e-mail	ckelly@wileyrein.com
Signature	/ck/
Date	11/03/2009
Attachments	DOC110.PDF (2 pages)(75383 bytes)

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

WHATABURGER PARTNERSHIP

Petitioner,

v.

AGROAMERICA CORPORATION

Respondent.

)
)
)
) Cancellation No. 92/050,094
) Reg. No.: 3,389,431
) Mark: WATTA
)
)
)

**STIPULATED MOTION REQUESTING AMENDMENT WITH CONSENT AND
CONTINGENT DISMISSAL OF CANCELLATION PROCEEDING**

Comes now Respondent, Agroamerica Corporation ("Respondent"), pursuant to 37 C.F.R. § 2.133, with the consent of Petitioner, Whataburger Partnership ("Petitioner"), and hereby requests amendment of the identification of goods in Reg. No. 3,389,431 – WATTA such that the identification is narrowed to read "fresh fruits and vegetables and not sold through restaurants, including quick and full-service restaurants."

Contingent upon the Board's acceptance of Respondent's request for amendment set forth above, Petitioner requests that the Board dismiss Cancellation No. 92/050,094.

Respectfully submitted,

WHATABURGER PARTNERSHIP

AGROAMERICA CORPORATION

By: 

Christopher Kelly
Jennifer Elgin
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for Petitioner

By: 

Albert Bordas, Esq.
Albert Bordas, P.A.
Patent, Trademark, and Copyright Law
5975 Sunset Drive, Suite 607
Miami, Florida 33143
Attorneys for Respondent

Dated: 11/3/09

Dated: Oct. 29, 2009

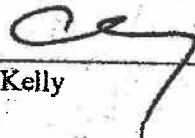
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WH00000825

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2009 I served the foregoing
STIPULATED MOTION REQUESTING AMENDMENT WITH CONSENT AND
CONTINGENT DISMISSAL OF CANCELLATION PROCEEDING by causing a copy
thereof to be deposited in the United States mail, postage prepaid and addressed as follows:

Albert Bordas, Esq.
Albert Bordas, P.A.
Patent, Trademark and Copyright Law
5975 Sunset Drive, Suite 607
Miami, Florida 33143



Christopher Kelly

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

mc

Mailed: November 10, 2009

Cancellation No. 92050094

Whataburger Partnership L.P.

v.

Agroamerica Corporation

On November 3, 2009, the parties filed registrant's proposed amendment to its Registration No. 3389431, with petitioner's consent, and petitioner's withdrawal of the petition to cancel, contingent upon entry of the amendment.

By the proposed amendment registrant seeks to change the identification of goods from "Fresh fruits; Fresh vegetables" to "fresh fruits and vegetables not sold through restaurants, including quick and full-service restaurants."

Inasmuch as the amendment complies with all of the procedural requirements of Trademark Rule 2.173, it is clearly limiting in nature, and petitioner consents thereto, it is approved. See Trademark Rule 2.133(a).

The amendment will be forwarded to the Post Registration Branch of this Office for appropriate action in accordance with Section 7(e) of the Trademark Act.

The contingency in petitioner's withdrawal having now been met, the petition to cancel is dismissed in accordance with the agreement between the parties.

*By the Trademark Trial
and Appeal Board*